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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,065	08/23/2001	Larry R. Bersch	TA-00524	1674

7399 01/23/2004
James E. Bradley
BRACEWELL & PATTERSON, LLP
Suite 2900
711 Louisiana Street
Houston, TX 77002-2781

EXAMINER

CORCORAN, GLADYS PIAZZA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/938,065

Applicant(s)

BERSUCH ET AL.

Examiner

Gladys JP Corcoran

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires three months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-18.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Gladys JP Corcoran
Examiner
Art Unit: 1733

Continuation of 5, does NOT place the application in condition for allowance because:

Applicant has not provided sufficient evidence that the Wanthal reference is not a "prior art" reference. The declaration filed December 31, 2003 is provided by one of the authors of the Wanthal Reference, however the statements regarding the "Closed Session" are not provided by someone who was present at the session or gave the presentation. Thus, it is unclear whether the reference or other material were handed out at the "Closed Session", if the conference in fact was "closed" and to what extent, and that the reference or other material is not printed or disseminated elsewhere (for example by the other companies who co-authored the reference).

It is further noted that the Declaration filed on December 31, 2003 states that attached is a portion of a document advertising a recent SAMPE meeting including a DD Form 2345 and a sample of a DD Form 2345, however no such documents could be found.